



State of Washington Trust Water Report of Examination

Change Place of Use		
Change Purpose of Use		
PRIORITY DATE	WATER RIGHT NUMBER	TRUST TERM
1943	G4-030317CL	Permanent

MAILING ADDRESS	APPLICATION FILE NUMBER
Borton & Sons, Inc 2550 Borton Road Yakima WA, 98903	CG4-030317CL

Purpose and Quantity

50 gallons per minute (gpm), 61.1 acre-feet/year (ac-ft/yr) for the purpose of groundwater preservation and mitigation for new groundwater uses.

REMARKS

Claim No. G4-030317CL will be held in trust once a deed of ownership is provided to Ecology. Once Ecology owns the claim, it will be held in trust to mitigate for future groundwater use by Borton and Sons Inc.

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Yakima County	Ellensburg Formation Aquifer	Yakima River	37

Place of Use (See Attached Map)

Groundwater preserved in the Ellensburg Formation Aquifer in the vicinity of Borton's well located within the SE¼, SE¼, Section 4, T. 12 N., R. 17 E.W.M.

Provisions Related to the Trust Water Right

Real Estate Excise Tax

This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue (Revenue) has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact Revenue to obtain specific requirements for your project. Contact information: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia WA 98504-7477; Phone: (360) 570-3265; Internet: <http://dor.wa.gov/>; E-mail: REETS@DOR.WA.GOV.

Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. CG4-030317CL subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Address and Location Information

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 111 Israel RD SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Signed at Yakima, Washington, this _____ day of _____ 2012.

Mark Kemner, LHG, Section Manager
Water Resources Program/CRO

If you need this document in an alternate format, please call the Water Resources Program at 509-575-2490. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

INVESTIGATOR'S REPORT

BACKGROUND

On December 12, 2011, Borton and Sons Inc. (Bortons) submitted Application No. CG4-030317CL requesting to permanently transfer Claim No. G4-030317CL to trust to mitigate for a new groundwater permit. To that end, the Bortons also submitted Application No. G4-33046 requesting a new groundwater right, which is addressed in a separate report. By transferring 61.1 ac-ft/yr, 50 gpm to trust, used under Claim No. G4-030317CL; the Bortons propose to instead use a new groundwater permit for 61.1 ac-ft/yr, 200 gpm from a new point of withdrawal.

Table 1: Attributes of the Existing Water Right and Proposed Change

Attributes	Existing	Proposed
Name	Borton & Sons, Inc.	Ecology Water Trust
Priority Date/ Change Application Date	1943 (claim filed June 20, 1973)	December 12, 2011
Instantaneous Quantity	50 gpm	50 gpm
Annual Quantity	61.1 ac-ft/yr	61.1 ac-ft/yr
Purpose of Use	Domestic, industrial, irrigation	Placed in Trust
Period of Use	Continuous (irrigating April 1 through September 15)	Not applicable
Place of Use	E½ of the NE¼ of Section 4 (parcel nos. 171204-14006, 14012, 14013, 14014, 14015, 14016, and 11001) all lying within T. 12 N., R. 17 E.W.M. as well as portions of the S½ of the SW¼, Section 34 (Parcel nos. 171334-33001 and 34406) lying within T. 13 N., R. 17 E.W.M. YAKIMA COUNTY (See attachments 1)	Placed in Trust
Point of Diversion	SE¼, SE¼, Section 4, T. 12 N., R. 17 E.W.M. PARCEL Nos. 171204-14012, LATITUDE: N. 46.56117, LONGITUDE: W. 120.69365	Not applicable

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change No. CG4-030317CL.

Public Notice

Public notice was given between March 16, 2012 and March 23, 2012. No protests or comments were received during the 30-day comment period.

State Environmental Policy Act (SEPA)

This action is for a water right less than 2,250 gpm and is, therefore, categorically exempt from SEPA requirements.

Water Resources Statutes and Case Law

The placement of a water right into trust is authorized in RCW chapters 90.38 (Yakima Basin only) and 90.42 (statewide). The action of transferring the subject water right is accomplished under the authority and process as defined in 90.03.380 and 90.44.100 RCW. There does not appear to be any conflict with the proper execution of these statutes.

Based on the provisions of RCW 43.21A.690 and RCW 90.03.265, this application has been processed by **Robinson Noble, Inc.** under Ecology Work Assignment No. ROB004 (Master Contract No. C1000191).

INVESTIGATION

History of Claim No. G4-030317CL

This water right has been in use since 1942 for domestic and warehouse (fruit storage/industrial) use. Initial use was from a well drilled by the owners in 1942, and soon after from a second well called the "pump house well," which was drilled in 1943. A third well was drilled in 1993 which replaced the 1942 original well.

In 2010, the Bortons filed Change Application No. YAK-06-07 with the Yakima County Water Conservancy Board (the board). The Bortons requested to change the following attributes of Claim No. 030317CL: the point of withdrawal (by drilling a replacement well for the failed Pump House Well), add an existing alternate point of withdrawal, and expand the place of use. On November 30, 2010 the board issued a Record of Decision authorizing the Borton's request. On February 11, 2011, Ecology issued a modification order (Ecology File No. CG4-WRC030317) confirming the board's approval and adding provisional language.

Site Visit

A site visit was performed on April 11, 2012 by F. Michael Krautkramer, the author. After meeting with the applicant's representative, Malcolm Hanks, a tour of the fruit packing facility, the pertinent well sites and the new office complex was provided. Subsequently, a hydrogeologic reconnaissance of the site and the surrounding area was conducted.

Extent and Validity

The Bortons have used the allocated water consistently for their fruit packing operation and the ancillary domestic and irrigation since the inception of the claim in roughly 1943. The 2010 conservancy board change decision provided a tentative determination of the extent and validity of the claim. Since the Board's action was accomplished only two years ago, that finding is relied on here. The water right is, therefore, accepted as valid and in good standing and the allocation of 50 gpm and 61.1 ac-ft/yr is available to be put in trust.

Annual Consumptive Quantity

The full water right was deemed consumptive in the 2010 conservancy board decision. No difference in use has occurred since that action. The proposed future use of groundwater preservation will not exceed the consumptive use of the average of the highest two years of the last five years.

Proposed Use

The proposed use of the water right is that it be permanently placed in trust. The purpose of its being placed in trust is to be managed as one-for-one mitigation that renders a new permit water-budget-neutral.

Other Water Rights Appurtenant to the Proposed Place of Use

The place of use also involves orchard land irrigated through water rights held by the Yakima Tieton Irrigation District and served through Laterals T and G of that ditch system. The applicant also has a second claim on record (Claim No. 030324) as emergency standby for the same general use as designated for the subject right.

Impairment Considerations

Transferring water use under Claim No. 030317CL to trust will not increase consumptive use of the water and will not impair existing water users.

Public Interest Considerations

Transferring water to trust is not detrimental to the public interest.

Consideration of Protests and Comments

No protests were received with regard to this action.

CONCLUSIONS

Claim No. 030317CL was found to be valid. Water is available to be transferred into trust without impairment to existing water rights or detrimental to the public interest.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request to transfer Claim No. 030317CL to trust be approved subject to the provisions on page 1, and within the following limitations listed below:

50 gpm, 61.1 ac-ft/yr to be held in the Ellensburg formation Aquifer, in the vicinity of Borton's well located within the SE $\frac{1}{4}$, SE $\frac{1}{4}$, Section 4, T. 12 N., R. 17 E.W.M., for the purpose of groundwater preservation and mitigation for new groundwater uses.

Report by: _____

F. Michael Krautkramer,
LHG #643, Principal Hydrogeologist
Robinson Noble, Inc.

Date

Reviewed by: _____

Kelsey Collins

Date

ATTACHMENT 1

